92-1738
No.

Supreme Court, U.S.
FILED
APR 30 1993
OFFICE OF THE CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1992

RALPH J. ABRAMO, JR.,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE APPEALS COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

BRENDAN J. PERRY,
Counsel of Record
CHRISTOPHER M. PERRY,
TERANCE P. PERRY,
BRENDAN J. PERRY & ASSOCIATES, P.C.,
95 Elm Street,
P.O. Box 6938,
Holliston, Massachusetts 01746.
(508) 429-2000

April 30, 1993

BATEMAN & SLADE, INC BOSTON, MASSACHUSETTS

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COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

92-P-145

COMMONWEALTH

vs.

RALPH J. ABRAMO, JR.

MEMORANDUM AND ORDER UNDER RULE 1:28

The defendant was convicted of indecent assault and battery on a child under the age of fourteen. First charged in the District Court, he was later bound over for trial in the Superior Court under G. L. c. 218, § 30. His main argument on appeal is that § 30 is unconstitutional on due process and equal protection grounds because of the disparity of sentencing options in the two courts for the crime of which he was convicted. For reasons set forth in Commonwealth v. Hudson, 404 Mass. 282,

289 (1989), the defendant's constitutional arguments are without merit.[1]

In view of the testimony of the victim, there was no error in the denial of the defendant's motion for a required finding of not guilty.

Judgment affirmed.

Order denying motions for post-conviction relief affirmed.

By the Court (Dreben, Fine & Laurence, JJ.)

Nancy Turk Foley /s/
Clerk

Entered: December 22, 1992

---

[1]We need not reach other of the Commonwealth's arguments which may also defeat the defendant's constitutional claims.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT FOR THE COMMONWEALTH,

AT BOSTON, DECEMBER 22, 1992

IN THE CASE OF

COMMONWEALTH

vs.

RALPH J. ABRAMO, JR.

pending in the Superior
Court for the County of Worcester

Ordered, that the following entry be made in the docket; viz.,--

Judgment affirmed.

Order denying motions for post-conviction relief affirmed.

BY THE COURT,

Nancy Turk Foley /s/, Clerk

December 22, 1992

Note: OVER

The original of the within rescript will issue in due course, pursuant to M R A P 23 APPEALS COURT

Decisions Pursuant to Rule 1:28

December 22, 1992

COMMONWEALTH vs. RALPH J. ABRAMO, JR. No. 92-P-145. Judgment affirmed. Order denying motions for post-conviction relief affirmed.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

WORCESTER SUPERIOR COURT

DOCKET NUMBER: 91-0482

COMMONWEALTH OF MASSACHUSETTS	)	
v.	)	NOTICE OF APPEAL
RALPH J. ABRAMO, JR., Defendant	)	

TO THE CLERK OF THE ABOVE-NAMED COURT:

Notice is hereby given pursuant to, consistent with and under the purview of Rules 3 and 4 of the Massachusetts Rules of Appellate Procedure, that the Defendant in the above-captioned case, Ralph J. Abramo., Jr., appeals the orders/judgment of the Worcester Division of Superior Court Department of the Trial Court which Court denied the following petition/motions on November 5, 1991:

1. Defendant's Mass. R. Crim. P. 30 Motion for Post Conviction Relief.

2. Defendant's Motion for a Required Finding of Not Guilty.

3. Defendant's Verified Petition for a Writ of Habeas Corpus Ad Subjiciendum.

Ralph J. Abramo, Jr., Defendant
By His Attorneys,
BRENDAN J. PERRY & ASSOCIATES, P.C.

By: Brendan J. Perry /s/
Brendan J. Perry
BBO# 395640
Christopher M. Perry
BBO# 552203
95 Elm Street
Holliston, MA 01746
(508) 429-2000

DATED: December 2, 1991

*Filed
Dec 2 1991
ATTEST
Loring P. Lamoureux /s/, Clerk

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

WORCESTER SUPERIOR COURT
DOCKET NO: 91-0482

COMMONWEALTH OF MASSACHUSETTS	)	
v.	)	NOTICE OF APPEAL
RALPH J. ABRAMO, JR.,	)	

TO THE CLERK OF THE ABOVE-NAMED COURT:

Notice is hereby given pursuant to, consistent with and under the purview of Rules 3 and 4 of the Massachusetts Rules of Appellate Procedure that the Defendant appeals the judgment of the Worcester Division of Superior Court Department of the Trial Court, entered on August 29, 1991, in relation to indictment number 91-0482, to the Appeals Court for the Commonwealth of Massachusetts.

The Appeals Court has jurisdiction pursuant to, consistent with and under the purview of M.G.L. c.211A § 10.

Ralph J. Abramo, Jr., Defendant
By His Attorneys,
BRENDAN J. PERRY & ASSOCIATES, P.C.

By: Brendan J. Perry /s/
Brendan J. Perry
BBO # 395640
Christopher M. Perry
BBO #552203
95 Elm Street
Holliston, Massachusetts 01746
(508) 429-2000

Dated: September 26, 1991

*Filed
Sep 26 1991
ATTEST
Loring P. Lamoureux /s/, Clerk

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CRIMINAL NO: ~~91-078~~
~~91-079~~
~~91-080~~
91-0478 ~~91-081~~
~~91-082~~
~~91-083~~

COMMONWEALTH OF MASSACHUSETTS	)	
	)	
	)	DEFENDANT'S MOTION
VS.	)	TO DISMISS
	)	
RALPH J. ABRAMO, JR.,	)	

Comes now the Defendant in the above-captioned case and moves this Honorable court pursuant to, consistent with and under the purview of Rule 13 of the Massachusetts Rule of Criminal Procedure to dismiss all of the above-numbered indictments which charge the Defendant with three Counts of M.G.L C.265 § 13(B) and three Counts of M.G.L. C.265 § 23.

As grounds in support of the within Motion, the Defendant states and avers as follows:

A. Dismissal of Indictments Relating to M.G.L. C.265 § 13(B)

1. The Defendant, in relation to M.G.L. C.265 § 13(B), is conceivably susceptible to the following terms of incarceration if convicted in the referenced Courts.

	District
1st Offense	2.5 yrs
2nd Offense	2.5 yrs
3rd Offense	2.5 yrs
	Superior
1st Offense	10 yrs
2nd Offense	Life
3rd Offense	Life
	Disparity
1st Offense	7.5 yrs
2nd Offense	Life - 2.5 yrs
3rd Offense	Life - 2.5 yrs

2. M.G.L. C.218 § 26 allows a District Court to retain jurisdiction over an asserted violation of M.G.L. C.265 § 13(B).

3. M.G.L. C.279 § 23 precludes a District Court from ordering male prisoner to execute a sentence of imprisonment for period greater than two and one half years in a jail or house of correction.

4. M.G.L. C.265 § 13(B) only allows for an individual to be punished in a state prison, jail or house of correction.

5. A District Court is unable to sentence a Defendant, found to be guilty of committing M.G.L. C.265 § 13(B), to a state prison. M.G.L. C.218 § 27.

*A true copy by photostatic process.
Attest: Kathleen F. Capurso /s/, Asst. Clerk
*4/8/91 Denied
H.F. Travers, Jr. JSC /s/

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

WORCESTER SUPERIOR

DOCKET NO: 91-0482

COMMONWEALTH OF MASSACHUSETTS	)
	) DEFENDANT'S MASS.
	) R. CRIM. P. 30
v.	) MOTION FOR POST-
	) CONVICTION RELIEF
RALPH J. ABRAMO, JR.,	)
Defendant	)

Now comes the Defendant in the above captioned case and moves this Honorable Court, pursuant to, consistent with and under the purview of Mass. R. Crim. P. 30, to reverse the judgment entered in relation to the felony set forth in indictment number 91-0482, to issue any and all process necessary, including, but not limited to a Writ of habeas Corpus Ad Subjiciendum, to effectuate Defendant's immediate and permanent release from the physical confinement, currently being imposed upon him by the Commonwealth which confinement is illegal and "imposed

in violation of the Constitution ... of the United States" of America. Mass. R. Crim. P. 30(a).

As grounds in support of the within motion the Defendant states and avers as follows:

1. A Defendant found guilty of violating M.G.L. C.265 § 13(B) is susceptible to the following terms [ceilings] of incarceration if convicted in the referenced Courts:

Offense	District
First	2.5 yrs
	Superior
First	10 yrs
	Disparity
First	7.5 yrs

2. M.G.L. C.218 § 26 allows a District to refrain jurisdiction over an asserted violation of M.G.L. C.265 § 13(B).

3. M.G.L. C. 279 § 24 precludes a District Court from ordering male prisoner to execute a sentence of imprisonment for a period greater than two and one half years in a jail or house of correction.

4. M.G.L. C.265 § 13(B) only allows an individual to be punished for allegedly violating such statute, in a state prison, jail or house of correction.

* A true copy by photostatic process. Attest: Karen A. Zona /s/, Dep. Asst. Clerk

* Filed Oct 22 1991

* 11/5/91 Denied Donohue
Attest: Kevin M. Golden /s/, Asst. Clerk

* 1/7/92 Notified Atty Perry/L.L. /s/

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

WORCESTER SUPERIOR COURT

DOCKET NO: 91-0482

COMMONWEALTH OF MASSACHUSETTS	)	
	)	MOTION FOR A REQUIRED FINDING OF NOT GUILTY
v.	)	
RALPH J. ABRAMO, JR., Defendant	)	

NOW COMES THE DEFENDANT in the above-captioned case and moves this Honorable Court, pursuant to, consistent with and under the purview of Mass. R. Crim. P. 25, to enter a Required Finding of Not Guilty of the offense charged in indictment number 91-0482 on the grounds that:

A. The evidence is insufficient, as a matter of law, to sustain the conviction on the offense set forth in the referenced indictment.

B. M.G.L. C.265 § 13(B), when utilized

in conjunction with the numerous statutes set froth below, itself violates, as do the referenced statutes, the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the United States Constitution.

FACTUAL BACKGROUND

The Defendant, Ralph J. Abramo, Jr., was convicted on August 29, 1991 for violating M.G.L. C.265 § 13(B) by a jury of twelve in the Worcester Division of the Superior Court Department of the Trial Court. The Court (Donohue, J. presiding) sentenced the Defendant to a term of 2 to 5 years at MCI Concord. The Defendant commenced the execution of his sentence on the referenced date.

The Defendant, Ralph J. Abramo, Jr., is a male person who resided at 342 Cooper Road, Northbridge, Worcester County, Massachusetts and had, prior to August

29, 1991, never been convicted of committing any felony or misdemeanor by any State, Commonwealth, Territory, Protectorate, the Federal Government, a Foreign Country or Foreign State.

As grounds in support of the within motion the Defendant states and avers as follows:

* A true copy by photostatic process. Attest: Karen A. Zona /s/, Dep. Asst. Clerk

* 11/5/91 denied Donohue Attest: Kevin M. Golden /s/, Asst. Clerk

* 1/7/92 Notified Atty Perry/L.L./s/

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
WORCESTER DIVISION
DOCKET NO: 91-0428

RALPH J. ABRAMO, JR., Petitioner vs. LARRY E. DUBOIS, COMMISSIONER OF THE DEPARTMENT OF CORRECTION AND PAUL L. DIPAULO, SUPERINTENDANT OF THE MASSACHUSETTS CORRECT	VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

Comes now the Petitioner in the above entitled matter and moves this Honorable Court to issue a Writ of Habeas Corpus Subjiciendum, pursuant to, consistent with and under the purview of M.G.L. c.248 § 1 permanently releasing the prisoner from physical custody of the below referenced individuals.

Consistent with the dictate of M.G.L. c.248 § 3, the Petitioner states and

avers as follows:

A. Location of Confinement - The Petitioner is currently imprisoned at the Massachusetts Correctional Institute, Concord situated at 965 Elm Street, Concord, Middlesex County, Massachusetts.

B. Individuals Imposing Confinement - The Petitioner is presently subjected to incarceration by Larry E. Dubois and Paul DiPaulo who are the Commissioner of the Massachusetts Department of Correction and the Superintendent of the Massachusetts Correctional Institution, Concord, respectively.

C. Prisoner's Name - This prisoner's name is Ralph J. Abramo, Jr. and he formerly resided at 342 Cooper Road, Northbridge, Worcester County, Massachusetts.

D. Cause of Incarceration - The prisoner was convicted of violating M.G.L. c.265 § 13(B) on August 29, 1991 and sentenced on such date to a term of incarceration between two (2) to five (5) years to be executed at the Massachusetts Correctional Institution, Concord (hereinafter "the conviction"). The petitioner commenced execution of such sentence at the referenced institution on August 29, 1991.

*A true copy by photostatic process.
Attest: Karen A. Zona /s/, Dep. Asst. Clerk

*11/5/91 denied Donohue
Attest: Kevin M. Golden /s/, Asst. Clerk

*1/7/92 Notified Atty Perry/L.L. /s/

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT

OF THE TRIAL COURT

Worcester, ss. **Criminal**

L.S. **No. 91-0482**

To the Sheriff of our County of Worcester, or any of his Deputies, and to the Superintendent of the Massachusetts Correctional Institution, Concord,

Greeting:

Whereas, by consideration of our Justices of our Superior Court Department, begun and holden of the transaction of Criminal Business, at Worcester within and for our County of Worcester aforesaid on the first Monday of August in the year of our Lord one thousand nine hundred and ninety-one.

RALPH J. ABRAMO, JR.

in our county of Worcester aforesaid, now in custody of the said Sheriff, convict of the crime of:

Indecent Assault and Battery on Child Chapter 265, Section 13B victim/witness fee $50.00 to be paid while incarcerated on the nineteenth day of the session of the same Court, being the twenty-ninth day of August, in the year of our Lord one thousand nine hundred and ninety-one *was sentenced to be confined in the said Massachusetts Correctional Institution, Concord,* five (5) years there to be held, disciplined and employed according to its rules and regulations and the statutes in that behalf duly made and provided, and the said Court did order him to stand committed, until he should be removed in execution of said sentence; and the Court further ordered that the prisoner is deemed to have served a portion of said sentence, such portion to be equivalent to the period of time from no credit Chapter 279, Section 33A

We therefore Command you, the said Sheriff, or any of your Deputies, forthwith to remove the said convict from our Jail in West Boylston aforesaid, to our said Massachusetts Correctional Institution, Concord and him safely deliver to the Superintendent thereof; and We also command you the said Superintendent of our said Massachusetts Correctional Institution, Concord to receive the said Convict and him to *imprison and employ in and within the precincts of the said Massachusetts Correctional Institution, Concord* agreeably to the sentence aforesaid; and for so doing this shall be a sufficient warrant. Hereof fail not and make return of this Warrant, with your doings thereon, to the office of the Clerk of our said Court in Worcester, aforesaid, as soon as may be.

Witness, ROBERT L. STEADMAN, Esquire at Worcester, this twenty-ninth day of August in the year of our Lord one thousand nine hundred and ninety-one.

Kevin M. Golden /s/

Assistant Clerk.

Copy

Attest R./s/

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT

OF THE TRIAL COURT

WORCESTER, SS. CRIMINAL

NO. 91-0482

COMMONWEALTH OF MASSACHUSETTS	)	
vs.	)	VERDICT SLIP
RALPH J. ABRAMO, JR.	)	

1. __ NOT GUILTY

2. X GUILTY - offense as charged.
Indictment Assault and Battery on a Child

~~3. __ GUILTY lesser included offense as follows:~~

Michelle R. Zvaeii Jones/s/
Signature of Foreman

VERDICT OF THE JURY returned and affirmed this 29th day of August, 1991.

Attest: Kevin M. Golden/s/
Assistant Clerk

Donohue J/s/
Associate Justice of the
Superior Court

Jud Kaye/s/
Court Reporter

A true copy by
photostatic process.
Attest: Karen A. Zona,
Deputy Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

WORCESTER,SS. SUPERIOR COURT
CRIMINAL DOCKET

Offense: INDECENT ASSAULT AND BATTERY ON CHILD 265/13B

Place: Northbridge

Surety and Amount:

Counsel: Christopher M. Perry and
Brendan J. Perry
95 Elm Street
P.O. Box 6938
Holliston, 3/21/91

Justice disposing of case: Donohue,J.

1991-March	7	1 INDICTMENT
		20 Plea Not Guilty
		Trial-3/25/91(Travers,J.)
		21 Defendant's Motion to Dismiss and Affidavit in Support and Memorandum in Support, filed and DENIED after Hearing (Travers, J.)(See Mo. #2 in case #91-0478)

Motion to continue Trial Date and Affidavit in Support, filed in court and this Motion will be addressed on 3/25/91 (Travers,J.)(See Mo. #3 in case #91-0478)

28 Pretrial Conference Report filed in court and Approved (Travers,J.)(See Mo. #4 in case #91-0478)

April 2 Demand for List of Jurors Pursuant to M.G.L. C. 277 S. 66, filed.(See Mo. #5 in case #91-0478)

Defendant's Motion to Dismiss and Affidavit in Support and Memorandum in Support, filed.(See Mo. #6 in case #91-0478)

8 Defendant's Motion for

Closure of Trial and Affidavit in Support and Brief, filed and DENIED - See Globe Newspaper Co. V. Superior Court, 383 Mass. 838 (1981) (Travers,J.)(See Mo. #7 in case #91-0478)

Defendant's Motion to Have the Three Alleged Victims Examined by a Licensed Psychiatrist or Psychologist and Affidavit in Support and Brief, filed and DENIED (Travers,J.) (See Mo. #8 in case #91-0478)

Defendant's Motion for Relief from the Prejudicial Joinder of Offenses Alleged to have

been Committed Against the Three Alleged Victims and Affidavit in Support and Brief, filed and DENIED (Travers,J.) (See Mo. #9 in case #91-0478) Defendant's Motion to Conduct Physical Examinations Upon the Alleged Victims and Affidavit in Support and Brief, filed and ALLOWED - The examination is to be arranged by Counsel(Travers,J.) (See Mo. #10 in case #91-0478) Defendant's Motion to Order the Commonwealth to Elicit Corroborating Testimonial Evidence at the time of Trial, Pursuant to the Fresh Complaint Doctrine, from

no more then one Individual, to the Extent that such Evidence exists and Affidavit in Support, filed and DENIED (Travers,J.)(See Mo. #11 in case #91-0478)

Motion in Limine and Affidavit in Support, filed and DENIED without Prejudice to objections on the same issues being raised in a specific context during trial. The Court, will not deal with such general issues prior to trial (Travers,J.) (See Mo. #12 in case #91-0478)

Mo. #6 - DENIED (Travers,J.)

23 Defendant's Motion to Appoint and Swear Court

Reporter, filed. (See Mo. #13 in case #91-0478)

24 Mo. #13 - ALLOWED at Defendant's Expense and Subject to Court Approval Qualification and Reporter to supply Transcripts to both parties (Travers,J.) Mo. #10 - Oral Motion to Reconsider - DENIED (Traver, J.)

26 Notice of Appeal, filed in court.(See Mo. #14 in case #91-0478)

May 13 Defendant's Motion to Continue, filed.(See Mo. #15 in case #91-0478)

14 Mo. #15 - ALLOWED to 6/-10/91(Hely,J.)

May 20 Motion to Restrict Physical Examination and Affidavit in Support, filed

in Court and ALLOWED (Hely,J.)(See Mo. #16 in case #91-0478)

Bill of Particulars, filed. (See Mo. #17 in case #91-0478)

29 Motion to Continue Trial, filed. (See Mo. #18 in case #91-0478)

August 29 Motion to Conduct Competency Hearings Prior to Jeopardy Attaching, filed. (See Mo. #19 in case #91-0478)

Motion to Sequester Jury, filed. (See Mo. #20 in case #91-0478) Motion to Sequester the Commonwealth's Witnesses, filed. (See Mo. #21 in case #91-0478)

Motion to Examine Each Perspective Traverse Juror Individually and out of Presence of all other Jurors and to Propound Certain Questions to each Juror, filed. (See Mo. #22 in case #91-0478)

Motion to Sequester the Commonwealth's witnesses during Voir Dire Examinations, filed. (See Mo. #23 in case #91-0478)

Defendant's Motion to conduct Individualized Voir Dire Examinations of the Commonwealth's Witnesses who will assumedly testify as to "Fresh Complaints" Allegedly having been made by Alleged Victims, filed.

(See Mo. #24 in case #91-0478)

First Motion in Limine to Exclude "Fresh Complaint" Testimony by Sergeant James M. Melia of the Northbridge Police Department, filed. (See Mo. #25 in case #91-0478)

Second Motion in Limine to Exclude "Fresh Complaint" Testimony by Sergeant James M. Melia of the Northbridge Police Department, filed. (See Mo. #26 in case #91-0478)

Third Motion in Limine to Exclude "Fresh Complaint" Testimony by Sergeant James M. Melia of the Northbridge Police De-

partment, filed. (See Mo. #28 in case #91-0478)

Fourth Motion in Limine to Exclude "Fresh Complaint" Testimony by Sergeant James M. Melia of the Northbridge Police Department, filed. (See Mo. #27 in case #91-0478)

Fifth Motion in Limine to Exclude Evidence of Prior Crimes, Wrongs or Acts, filed. (See Mo. #29 in case #91-0478)

Sixth (Assented to) Motion in Limine to Exclude Evidence Pertaining to Anal Intercourse and/or Anal Penetration, filed. (See Mo. #30 in case #91-0478)

Seventh Motion in Limine to Exclude Physician's Statements indicating that any of the Alleged Victims were Allegedly Sexually Assaulted or Raped, filed. (See Mo. #31 in case #91-0478)

Eighth Motion in Limine Excluding Evidence of Hearsay Statements indicting that any of the alleged victims, which M.G.L. C.233 S. 81(a) would Ostensibly admit, in the event said Victims are determined to be unavailable Pursuant to M.G.L. C.233 S. 81(b), filed. (See Mo. #32 in case #91-0478)

Ninth Motion in Limine to Preclude the Commonwealth from Arguing that the Complaining witness would not "Go through this (The Trauma) of a Trial unless they and/or she were/was, respectively, telling the truth, filed. (See Mo. #33 in case #91-0478)

Tenth Motion in Limine Pertaining to Instructions of Unnatural Sexual Intercourse filed in court. (See Mo. #34 in case #91-0478)

Eleventh Motion in Limine to Order the Commonwealth, or its Witnesses, from Referring to the Complaining Witnesses as

"Victims", filed. (See Mo. #35 in case #91-0478) Defendant's Request for Final Jury Instructions, filed. (See Mo. #36 in case #91-0478)

2 Motion for a Required Finding of Not Guilty, filed in court and DENIED (Donohue,J.)

3 Verdict - GUILTY

Sentence: 5 yrs. M.C.I. Concord, No Credit Chapter 279 Section 33A (Donohue,J.) Victim/Witness fee $50.00 to be paid while incarcerated

Mittimus issued

Sept. 6 4 Motion for a Required Finding of Not Guilty and Affidavit in Support and

			Memorandum in Support, filed.
		16	Transcripts Received (2 Volumes)
		18 5	Verified Petition for a Writ of Habeas Corpus Ad Subjiciendum and Affidavit in Support and Memorandum in Support, filed.
		26 6	Notice of Appeal, filed.
Oct.		22 7	Defendant's Mass. R. Crim. P. 30 Motion for Post Conviction Relief and Affidavit in support and Memorandum in Support, filed.
Nov.		5	Mo. #4 - DENIED (Donohue, J.)
			Mo. #5 - DENIED (Donohue, J.)
			Mo. #7 - DENIED (Donohue, J.)

Dec. 2 8 Notice of Appeal, filed.

A true copy by photostatic process.

Attest: Karen A. Zona, Deputy Assistant Clerk

Supreme Judicial Court for the
Commonwealth of Massachusetts
1412 Courthouse
Boston, Massachusetts 02108
(617) 725-8055

Brendan J. Perry, Esquire
Brendan J. Perry & Associates
95 Elm Street
PO Box 6938
Holliston MA 01746

RE: Docket No. FAR-06437

COMMONWEALTH

vs.

RALPH J. ABRAMO, JR.

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on February 8, 1993, the above-captioned Application for further Appellate Review was denied.

Jean M. Kennett, Clerk

Dated: February 8, 1993

To: Katherine E. McMahon, A.D.A.
Brendan J. Perry, Esquire

Orders.

February 8, 1993

Further Appellate Review Denied:

Commonwealth vs. Ralph J. Abramo, Jr.

Reported below: 33 Mass. App. Ct. 1119 (1992).

No..... DUPLICATE

THE COMMONWEALTH OF MASSACHUSETTS

PAROLE BOARD

CERTIFICATE OF PAROLE

KNOW ALL MEN BY THESE PRESENTS:

It having been made to appear to the Massachusetts Parole Board that Ralph J. Abramo Jr. No. C-56437 a prisoner sentenced to the Massachusetts Correctional Institution at Concord is eligible to be paroled, and the matter having been given careful consideration, it is, therefore ordered by the said Parole Board that the said prisoner be released on parole and permitted to be at liberty during the unexpired portion of the sentence which expires on the 28th day of August, 1996.

BE IT ALSO KNOWN that this permit to be at liberty is granted upon condition

that the said prisoner has agreed to observe and perform all of the rules and covenants shown on the reverse of this certificate, all of which are hereby made and agreed to be conditions precedent to said prisoner's release.

Dated at Boston, this 4th day of February, 1993.

By order of the PAROLE BOARD

By.....
Chairman

Massachusetts Parole Board

The above named prisoner was released on this 4th day of February 1993 from the Pondville Correctional Center.

/s/

.....
Superintendent

READ CAREFULLY THE FOLLOWING CONDITIONS UNDER WHICH THIS PAROLE IS GRANTED

These conditions of parole are designed to provide guidance for a parolee in his everyday conduct so as to facilitate his transition to the community and at the same time to safeguard legitimate community interests. They will be implemented with the flexibility appropriate to individual needs and circumstances and with due regard for basic human dignity. To insure these goals, it is expected that a parolee will be available at reasonable times for consultation with his parole officer.

PAROLE CONDITIONS

I. I will obey local, state, and federal laws; and conduct myself in the manner of a responsible citizen.

II. I will notify my parole officer in writing within 24 hours of any changes in my employment or residence. I will notify my parole officer before applying for a license to marry. I will inform my parole officer within 24 hours if arrested.

III. I will make earnest efforts to find and maintain legitimate employment, unless engaged in some other program approved by my parole officer.

IV. I will not engage in a continuous pattern of association with persons I know to have a criminal record, or who are known to be engaged in a violation of law. This prohibition does not apply where such association is INCIDENTAL to my place of residence or employment, or

connected with activities of a bonafide political or social organization. However, the parole board retains authority to impose limits to these latter activities as a special condition of parole where such association is inconsistent with my approved parole plan.

V. I will not leave the state of Massachusetts for periods in excess of 24 hours without securing permission from my parole officer.

VI. Special conditions of my parole: (if warranted, may be imposed subsequent to my date of release.)

VII. I will not serve as an informant or special agent for any law enforcement agency.

a) None

b) Supervise for Drugs. Supervise

for Liquor Abstinence.

No Unsupervised Contact with Children under 16 Yrs.

c) No Contact with Biological Children Except as Approved By the Court.

d) Report to Regional Parole Office Day of Release at 12:00 Noon.

I Hereby Certify that I fully understand the above conditions under which I am being released and agree to faithfully observe the same.

Ralph J. Abramo, Jr./s/
Signature of Parolee

Dated: 2 - 4, 1993

Witness.

...../s/....
Special State Police Officer
Official Title

Federal Constitutional Provisions

Amendment XIV [1868]

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutory Provisions

28 U.S.C. § 1257. State courts; appeal; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which

a decision could be had, may be reviewed by the supreme court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

MASSACHUSETTS RULES OF CRIMINAL PROCEDURE

Rule 3. Complaint and Indictment; Waiver of Indictment

(Applicable to District Court and Superior Court)

(a) **Commencement of Criminal Proceeding.** A criminal proceeding shall be commenced in the District Court by a complaint and in the Superior Court by an indictment, except that if a defendant is charged in the District Court with a crime as to which he has the right to be proceeded against by indictment and requests a probable cause hearing, that request shall constitute a waiver of the right to be proceeded against by indictment and the Commonwealth may proceed upon the complaint.

No criminal proceeding shall be commenced against a juvenile unless proceedings against him as a delinquent child have been begun and dismissed as required by the General Laws.

(b) **Indictment**

(1) Right to Indictment. A defendant charged with an offense punishable by imprisonment in state prison shall have the right to be proceeded against by indictment except when the offense charged is within the concurrent jurisdiction of the District and Superior Courts unless the Commonwealth proceeds by indictment pursuant to subdivision (e) of this rule.

(c) **Procedure Upon Waiver of Indictment in District Court.**

(1) In General. If the District Court declines jurisdiction over an

offense within its concurrent jurisdiction as to which there is a right to be proceeded against by indictment, or if a defendant is arraigned upon a charge over which the District Court has no jurisdiction, the judge shall advise the defendant that he may waive indictment and proceed upon the complaint. No defendant shall waive the right to be proceeded against by indictment unless he is represented by counsel or has waived counsel. A defendant shall not waive the right to be proceeded against by indictment and elect a probable cause hearing except by filing in court, on the return day or at such other time as the court may order, a written waiver of that right and a request for a probable cause hearing. The court may for cause shown grant relief from that waiver.

(2) Transmission of Papers. If the defendant is bound over to the Superior Court for trial after a finding of probable cause or after the defendant waives a probable cause hearing, the clerk of the District Court shall transmit to the clerk of the Superior Court a copy of the complaint and of the record; the original recognizances; a list of the witnesses; a statement of the expenses and the appearance of the attorney for the defendant, if any is entered; the waiver of the right to be proceeded against by indictment, if any is executed; the pretrial conference report, if any has been filed; and the report of the department of mental health as to the mental condition of the defendant, if such report has been filed under the provisions of the General Laws.

(d) **Waiver of Indictment in Superior Court.** Notwithstanding the failure of a defendant to file a written waiver of the right to be proceeded against by indictment and request for a probable cause hearing in the District Court, the defendant may with the consent of the prosecuting attorney waive that right and elect to proceed upon the complaint in the Superior Court. The waiver shall be in writing and filed in the Superior Court.

(e) **Indictment after Waiver.** Notwithstanding the defendant's waiver of the right to be proceeded against by indictment and request for a probable cause hearing, the prosecuting attorney may proceed by indictment.

Rule 30 - Post Conviction Relief

(Applicable to District Court and Superior Court)

(a) Unlawful Restraint. Whoever is imprisoned or restrained of his liberty pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or to correct the sentence which he is then serving upon the ground that his confinement or restraint was imposed in violation of the Constitution or laws or the United States or of the Commonwealth of Massachusetts.

(b) New Trial. The trial judge upon motion in writing may grant a new trial at any time if it appears that justice may not have been done. Upon the motion the trial judge shall make such findings of fact as are necessary to resolve the defendant's allegations of law.

(c) Post Conviction Procedure.

(1) *Service and Notice.* The moving party shall serve the District Attorney with a copy of any motion filed under this rule; the moving party shall serve the Attorney General with a copy of any motion filed under subdivision (a) of this rule.

(2) *Waiver.* All grounds for relief claimed by a defendant under subdivisions (a) and (b) of this rule shall be raised by the defendant in his original or amended motion. Any grounds not so raised are waived unless the judge in his discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.

(3) *Affidavits.* Each moving party shall file and serve and each party

opposing a motion may file and serve affidavits where appropriate in support of his respective position. The judge may rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing if no substantial issue is raised by the motion or affidavits.

(4) *Discovery.* Where affidavits filed by the moving party under subdivision (c)(3) establish a prima facie case for relief, the judge on motion of any party may authorize such discovery as is deemed appropriate and as would be available in civil cases, subject to appropriate protective order.

(5) *Counsel.* The judge in his discretion may assign or appoint counsel in accordance with the provisions of these rules to represent a defendant in

the preparation and presentation of motions filed under subdivisions (a) and (b) of this rule.

(6) *Presence of Moving Party.* A judge may entertain and determine a motion under subdivisions (a) and (b) of this rule without requiring the presence of the moving party at the hearing.

(7) *Place of Hearing.* All motions under subdivisions (a) and (b) of this rule may be heard by the trial judge wherever he is then sitting.

(8) *Appeal.* An appeal from a final order under this rule may be taken to the Appeals Court by either party. If an appeal is taken:

(A) The defendant shall not be discharged from custody pending final decision upon the appeal; provided, however, that the defendant may, in the

discretion of the judge, be admitted to bail pending decision of the appeal.

(B) upon written motion supported by the affidavit the Appeals Court may determine and approve payment to the Defendant of his costs of appeal together with reasonable attorney's fees, to be paid on the order of the trial court after entry of the rescript. If the final order grants relief other than a discharge from custody, the trial court or the court in which the appeal is pending may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of this matter.

G.L. c.126, § 8. **Establishment** (Houses of Correction)

The county commissioners in each county, except Dukes, shall at the expense of the county provide a house or houses of correction, suitably and efficiently ventilated, with convenient yards, workshops and other suitable accommodations adjoining or appurtenant thereto, for the safe keeping, correction, government and employment of offenders legally committed thereto by the courts and magistrates of the Commonwealth or of the United States.

G.L. c.218, § 26. **General Provisions.**

The District Courts and the Municipal Court of the city of Boston shall have original jurisdiction, concurrent with the Superior Court, of the following offenses, complaint of

which shall be brought in the division of the District Court Department, or in the Boston Municipal Court Department, as the case may be, within which judicial district the offense was allegedly committed or is otherwise made punishable: all violations of by-laws, orders, ordinances, rules and regulations, made by cities, towns and public officers, all misdemeanors, except libels, all felonies punishable by imprisonment in the state prison for not more than five years, the crimes listed in paragraph (a) of section twenty-four G and paragraph (1) of section twenty-four L of chapter ninety, paragraph (a) of section thirty-two and paragraph (a) of section thirty-two A and section thirty-two J of chapter ninety-four C, section fifteen A of chapter two hundred and

sixty-five and sections sixteen, seventeen, eighteen, nineteen, twenty-eight, forty-nine and one hundred and twenty-seven of chapter two hundred and sixty-six, and the crimes of malicious destruction of personal property under section one hundred and twenty-seven of chapter two hundred and sixty-six, indecent assault and battery on a child under fourteen years of age, escape or attempt to escape from any penal institution, forgery of a promissory note, or of an order for money or other property, and of uttering as true such a forged note or order, knowing the same to be forged. They shall have jurisdiction of proceedings referred to them under the provisions of section four A of chapter two hundred and eleven.

G.L. c.218, § 27. **Imposition of Penalties.** [District Court]

They may impose the same penalties as the superior court for all crimes of which they have jurisdiction, except that they may not impose a sentence to the state prison.

G.L. c.218, § 30. **Binding Over to Superior Court.** [District Court]

They shall commit or bind over for trial in the superior court persons brought before them who appear to be guilty of crimes not within their final jurisdiction, and may so commit or bind over persons brought before them who appear to be guilty of crimes within their final jurisdiction. If such a person is committed for failure to recognize as ordered, the superior court shall thereupon have jurisdiction of the

case against such person for the purpose of revising the amount of bail theretofore fixed.

G.L. c.265, § 13B. **Indecent Assault and Batter on a Child Under Fourteen**

Whoever commits an indecent assault and battery on a child under the age of fourteen shall be punished by imprisonment in the state prison for not more than ten years, or by imprisonment in a jail or house of correction for not more than two and one-half years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or

employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

G.L. c.265, § 23. **Rape and Abuse of a Child Under 16**

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under sixteen years of age shall, for the first offense, be punished by imprisonment in the state prison for life or for any term of years, or, except as otherwise provided, for any term in a jail or house of correction, and for the second or subsequent offense by imprisonment in the

state prison for life or for any terms of years, but not less than five years.

G.L. c.274, § 1. **Felonies and Misdemeanors.**

A crime punishable by death or imprisonment in the state prison is a felony. All other crimes are misdemeanors.

G.L. c.279, § 23. **Limitation of Sentences of Males to Jails or Houses of Correction [District Court]**

No sentence of a male convict to imprisonment or confinement for more than two and one half years shall be executed in any jail or house of correction.

G.L. c.279, § 33. **Term of Sentences to Massachusetts Correctional Institution, Concord.**

Whoever is sentenced to the Massachusetts Correctional Institution,

Concord for larceny of property of a value exceeding one hundred dollars or for any felony may be held therein for not more than two and one half years unless sentenced for a longer term, in which case he may be held therein for such longer term; if sentenced to said Massachusetts Correctional Institution, Concord for larceny of property of a value not exceeding one hundred dollars, he may be held therein for not more than two years; if sentenced to said Massachusetts Correctional Institution, Concord for any other offense, he may be held therein for not more than the maximum term fixed by law for the punishment of the offense of which he has been convicted.

Brendan J. Perry, Esquire
Counsel of Record
Christopher M. Perry, Esquire
Terance P. Perry, Esquire
BRENDAN J. PERRY & ASSOCIATES, P.C.
95 Elm Street
P.O. Box 6938
Holliston, MA 01746
(508) 429-2000